

**BOARD OF ENVIRONMENTAL REVIEW
AGENDA ITEM**

EXECUTIVE SUMMARY FOR ACTION ON RULE ADOPTION

Agenda Item # III.A.2.

Agenda Item Summary: The Department requests that the Board amend the air quality rules to incorporate changes to 40 CFR 70.6(c)(5)(iii)(B) and 70.6(c)(5)(iii)(C) regarding Title V annual compliance certifications and whether the reporting facility's compliance was continuous or intermittent during the reporting period.

List of Affected Rules: This rulemaking would amend ARM 17.8.1213.

Affected Parties Summary: The proposed rule amendment could affect all facilities regulated under the Department's Title V air quality operating permit program.

Scope of Proposed Proceeding: The Department requests that the Board adopt the proposed amendment to the above-referenced rule as proposed in the Montana Administrative Register.

Background: This action is in response to the U.S. Environmental Protection Agency's (EPA's) direct final action noticed in the Federal Register, 68 FR 38517, amending 40 CFR 70.6(c)(5)(iii)(B) and 70.6(c)(5)(iii)(C). It is necessary for the state to adopt the revisions to the federal regulations to maintain the state's delegation of authority from EPA and the state's primacy to enforce the Title V operating permit program.

ARM 17.8.1213, as it currently reads, requires responsible officials in their annual certifications to identify each term and/or condition of the permit, the method(s) or other means used to identify the status of compliance, and whether the methods used provide continuous or intermittent data. The responsible official would then identify the status of compliance with each permit term (e.g., whether the facility was in or out of compliance). The current language incorporates federal language that was adopted in 1997 but later was challenged in a court action filed by the Natural Resources Defense Council, Inc. (NRDC) and the Appalachian Power Company et al. (industry).

The proposed amendment adopts the federal rule change clarifying the annual compliance certifications and returning to language adopted in a 1992 federal rulemaking. Under the proposed rule, ARM 17.8.1213 would require responsible officials to identify each term and/or condition of the permit and whether or not compliance with that term or condition was continuous or intermittent during the reporting period.

The proposed rule would provide more information to the permitting authority and the public, as the status of compliance is more directly described. Knowledge of the method and the type of data it produces is secondary to the description of compliance. The Department has requested that facilities explain their interpretations of the terms "continuous" and "intermittent" to clarify those interpretations in annual compliance certifications under the current rule and would continue to request such information under the proposed rule.

Hearing Information: A hearing in the matter was conducted before Kelly O'Sullivan on

November 5, 2003.

Board Options: The Board may:

1. Adopt the proposed amendment as set forth in the attached Notice of Public Hearing on Proposed Amendment;
2. Adopt the proposed amendment with revisions that the Board finds are appropriate and that are consistent with the scope of the Notice of Public Hearing on Proposed Amendment and the record in this proceeding; or
3. Decide not to adopt the amendment.

DEQ Recommendation: The Department recommends that the Board adopt the proposed amendment as set forth in the original Notice of Public hearing on Proposed Amendment.

Enclosures - The following information is attached to this summary:

1. Notice of Public Hearing on Proposed Amendment;
2. Hearing Officer Report; and
3. Draft Notice of Amendment.